

DARDEN, Judge

STATEMENT OF THE CASE

Sarah Rehm (“Mother”) appeals the trial court’s order adjudicating her minor children, H.T. and J.R. to be children in need of services (“CHINS”).

We affirm.

ISSUE

Whether sufficient evidence exists to support the adjudication.

FACTS

Mother is the biological mother of H.T. (born September 28, 2002), and J.R. (born July 9, 2005). Paternity has not been established as to H.T.; however, Dewayne Henderson and Ryan Moore have been identified as putative fathers. Mother is currently married to Thomas Rehm; however, they are separated. J.R. was born of the marriage. At the time of the underlying trial, Mother was in a relationship with Michael Locke.

On November 10, 2004, the children’s maternal grandmother, Paula Foster-McMurtry (“Grandmother”), obtained legal guardianship of H.T. when Mother and Rehm moved to California. When Mother and Rehm returned months later, they moved in with Grandmother for approximately two weeks. Mother and Rehm married, moved into their own home, and took H.T. to live with them. Grandmother’s legal guardianship of H.T. was never dissolved. Mother and Rehm separated in January of 2006, when Mother met Locke.

H.T. lived with Mother until approximately January of 2008, when she was returned to Grandmother’s care. In January of 2008, Mother was evicted from her home.

She and the children moved back in with Rehm and his father. Approximately one week later, Mother asked Grandmother to take H.T. to live with her for three months. Mother expressed concern about Rehm and his father's use of derogatory racial language and the effect thereof on H.T., who is biracial. Grandmother agreed.

On March 29, 2008, Grandmother dropped H.T. off at the Marion County Children's Guardian Home and advised that she could not control her, and was unwilling and unable to care for her. On March 31, 2008, the Marion County Department of Child Services (MCDCS) received a report that H.T. had been dropped off at the Guardian Home. Family case manager Heather Beckwith ("FCM Beckwith") was assigned to investigate.

On April 1, 2008, FCM Beckwith conducted an interview of Grandmother, who stated that H.T. exhibited "extreme" behaviors, such as "temper tantrums, threatening to commit suicide," and "consistently asking to eat," but declining to eat when food was provided. (App. 28). Grandmother added that H.T. often flew into rages, refused direction, and could not sit quietly.¹ She further stated that after unsuccessfully attempting to arrange for Mother to resume her custody of H.T., she took H.T. to the Guardian Home for a psychological evaluation. On March 29, 2008, just before dropping H.T. off at the Guardian Home, Grandmother attempted again to contact Mother, to no

¹ FCM Beckwith also interviewed Mother's younger sister. She advised that H.T. often shouted and lashed out violently at her, at Grandmother, and even the family cat. Mother's sister expressed fear that H.T. might become a "psychopath." (App. 37). Mother's sister advised that H.T. had expressed a desire to kill herself, saying that she "wanted to lie in the street and be run over." (App. 37).

avail. Mother's sister sent Mother an electronic mail message instructing her to pick H.T. up from the Guardian Home.

Grandmother advised FCM Beckwith that Mother abused drugs and alcohol; neglected the children's hygiene; and did not provide either a consistent supply of food or a clean home environment for her children. She stated that Mother has attempted suicide, and has numerous scars on her arms from her attempts. She also stated that Rehm's family was abusive to H.T. because H.T.'s father is African-American, and Rehm's family is of Mexican origin. Lastly, Grandmother stated that Mother and Locke had a history of domestic violence.

On April 3, 2008, FCM Beckwith interviewed Mother. Mother acknowledged her lack of stable housing, lack of income, and lack of a means of transportation. She also acknowledged the cutting incident and suicidal thoughts, but dismissed them as attributable to prescribed medication that she has since ceased taking. She denied having any drug and/or alcohol abuse issues or problems with domestic violence in her relationship.

On April 4, 2008, FCM Beckwith filed a petition alleging H.T. and J.R. to be CHINS. The petition stated, in relevant part, the following:

5. The children are Children in Need of Services as defined in IC 31-34-1 in that:

One or more of the children's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of a parent, guardian or custodian to supply one or more of the children with necessary food, clothing, shelter, medical care, education or supervision, and the children are unlikely to be provided or accepted

without the coercive intervention of the Court, as shown by the following, to wit:

- A) On or about April 3, 2008, the Marion County Department of Child Services (MCDCS) determined by its Family Case Manager (FCM) Heather Beckwith these children to be children in need of services because [Mother] has failed to provide the children with a safe, stable, and appropriate home environment free from substance abuse and neglect. [Mother] does not have stable housing, is unemployed with no source of income, and has untreated mental health and substance abuse issues. She admits to cutting herself in the past but failed to go to the hospital or seek any treatment after this occurred. Upon moving to California, [Mother] consented to the guardianship of [H.T.] by her mother, and this guardianship is still in place.
- B) Ryan Moore and Duane Henderson are the alleged fathers of [H.T.]. Paternity has not yet been established and neither Mr. Moore nor Mr. Henderson has come forward to successfully demonstrate to MCDCS his ability or willingness to care for [H.T.]. Thomas Rehm is the father of [J.R.]. Mr. Rehm is still married to [Mother] and has failed to protect [J.R.] from his mother's untreated substance abuse and mental health issues. Mr. Rehm has indicated that he does not believe Ms. Rehm should have unsupervised contact with [J.R.]. However, Mr. Rehm has not filed any documents with the court to address custody, visitation, and support issues.
- C) [Grandmother] is the legal guardian of [H.T.]. [Grandmother] is unable and unwilling to continue caring for this child. On or about March 31, 2008, [Grandmother] dropped [H.T.] off at the Guardian[] Home and indicated that she did not want the child any longer.

(App. 29-30).

On May 21, 2008, the trial court conducted a fact-finding hearing on the MCDCS' petition. In the State's case in chief, FCM Beckwith testified to the foregoing facts. The MCDCS intended to call Grandmother as a witness; however, she failed to appear at the hearing as planned. After the State rested, Mother, Locke, and Rehm gave testimony. The trial court then took the matter under advisement.

On June 25, 2008, the trial court issued its findings of fact and conclusions of law, wherein it made, in relevant part, the following findings:

* * *

19. [Grandmother] drinks alcohol to excess and often becomes intoxicated. [Grandmother] has done this while she has been the legal guardian for [H.T.], and while [H.T.] has been in her care.

20. At the time the CHINS petition was filed in this case, [Mother] did not have stable housing and was unemployed with no income. She was unable to care for her children at that time, and there was no one available and willing to care for [H.T.].

21. [Mother] has smoked marijuana on occasion. She says that she stopped using marijuana approximately two months ago.

22. [Mother] was prescribed the drug Effexor, an anti-depressant, for approximately two years. After that, she was prescribed Wellbutrin, which is also an anti-depressant, to help her quit smoking.

23. During the summer of 2007, [Mother] had an incident where she cut herself [in an apparent suicide attempt]. [Mother] sought no medical treatment for her injuries, nor did she see a mental health professional following this incident. Additionally, she stopped taking all anti-depressant medication following this incident.

24. Thomas Rehm was aware of [Mother] cutting herself and of her marijuana use but took no steps to gain custody of [J.R.] or to protect him from [Mother]'s behavior.

25. [Mother] currently lives with her boyfriend, Michael Locke.

26. Both [Mother] and Thomas Rehm currently have appropriate housing.

27. [Mother] is currently employed with two jobs.

28. [Mother] has still not sought treatment for her mental health or substance abuse issues.

* * *

33. [MC]DCS substantiated the allegations of neglect as to the above-named children and determined that removal of the children from the care of their parents was necessary, based upon [Mother]'s inability to provide

stable housing and a stable home environment for her children, [Mother]’s untreated mental health and substance abuse issues which significantly impair her ability to appropriately parent her children, Thomas Rehm’s failure to protect [J.R.] from [Mother]’s substance abuse and mental health issues, and [Grandmother] being no longer willing to care of and serve as legal guardian for [H.T.].

34. Given the fact that [Mother] has still not sought treatment for her mental health and substance abuse . . . issues, and the fact that [Mother] and Thomas Rehm are still married, rendering Mr. Rehm unable to legally protect his child from [Mother]’s untreated mental health and substance abuse issues, court intervention is necessary to provide services to this family to ensure that the above-named children are safe in the care of their parents.

The trial court then stated, in relevant part, the following conclusions of law:

* * *

4. [H.T.] and [J.R.] are children in need of services as defined in IC 31-34-1 in that their physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal or neglect of their parent, guardian or custodian to provide them with necessary food, clothing, shelter, medical care, education or supervision.

5. [H.T.] and [J.R.] are children in need of services because their mother, [Mother], has untreated substance abuse and mental health issues that impair her ability to appropriately parent her children; because [J.R.]’s father, Thomas Rehm, has taken no steps to obtain legal custody of [J.R.] or to protect him from [Mother]’s behavior; and because [H.T.]’s legal guardian is no longer willing to care for her.

6. Therefore, [H.T.]’s and [J.R.]’s physical and mental condition has been seriously impaired or seriously endangered as a result of their mother’s inability to provide them in appropriate supervision due to her untreated substance abuse and mental health issues. [J.R.]’s physical and mental condition has also been seriously impaired or seriously endangered as a result of his father’s failure to provide him with appropriate supervision by failing to take steps to obtain custody of him and to protect him from his mother’s behavior. [H.T.]’s physical and mental condition has also been seriously impaired or seriously endangered as a result of her legal guardian’s refusal to continue to provide her with necessary food, clothing, shelter, medical care, education and supervision.

7. [H.T.] and [J.R.] need care, treatment or rehabilitation that they are not receiving and that is unlikely to be provided or accepted without the coercive intervention of the Court, since [Mother] has still not sought treatment for her substance abuse and mental health issues, despite [MC]DCS's involvement, and since Thomas Rehm has still not taken any legal steps to obtain custody of [J.R.] in order to protect him from his mother's behavior[.]

8. The children, [H.T.] and J.R., are adjudicated to be children in need of services as to [Mother], Thomas Rehm, Ryan Moore, and Paula Foster.

(Order 2-3). Mother now appeals the adjudication.

DECISION

Mother argues that the evidence is insufficient to support the trial court's determination that H.T. and J.R. are CHINS. We disagree.

When this court reviews a case where a trial court has entered findings of fact and conclusions of law, we will not set aside the judgment of the trial court unless it is clearly erroneous. *Roark v. Roark*, 551 N.E.2d 865, 869 (Ind. Ct. App. 1990). A trial court's findings of fact, conclusions of law and judgment are considered to be clearly erroneous only if a review of the whole record leads us to a definite and firm conviction that a mistake has been made. *Id.* In reviewing findings of fact made by the trial court, we consider only the evidence and reasonable inferences drawn therefrom which support the judgment. *Id.* We neither reweigh the evidence nor judge the credibility of witnesses. *Id.*

Indiana Code section 31-34-1-1 provides that a child under eighteen years of age is a CHINS if:

(1) the child's physical or mental health is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's

parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation the child:

(A) is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

In addition, a child under eighteen years of age is a CHINS if:

(1) The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and

(2) The child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

I.C. § 31-34-1-2(a).

The CHINS statute does not require a court to wait until tragedy occurs to intervene. *Roark*, 551 N.E.2d at 872. Rather, a child is a CHINS when he or she is seriously endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is not to punish parents, but rather, to protect the children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

The relationship between parent and child is constitutionally protected. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents in directing the care, custody, and control of their children. *Id.* This right is not unlimited, however, and when parents neglect, abuse or abandon their children, the state has the authority under its *parens patriae* power to intervene. *In re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006).

In challenging the sufficiency of the evidence to support the trial court's CHINS determination, Mother asserts that she was "unduly prejudiced by th[e] out-of-court statements of [Grandmother]" introduced through the testimony of FCM Beckwith. Specifically, she contends that "FCM [Beckwith] was allowed to testify to statements made to her by [Grandmother] regarding [Mother] without establishing a basis for [Grandmother]'s knowledge of the specific allegations regarding mental health, drug use, and the alleged incident of leaving the children in a gated bedroom all day without the children being fed." Mother's Br. at 9.

Mother argues that she and Grandmother have a contentious relationship and accuses Grandmother of having fabricated the claims of Mother's alleged untreated mental health and substance abuse issues. Mother denies being diagnosed with or treated for depression, and asserts that she was prescribed Effexor and Wellbutrin antidepressants for body pains and for assistance with smoking cessation, respectively. She does not deny that the cutting incident occurred, but attributes the cutting incident, her "unusual behavior," and her suicidal thoughts to the Wellbutrin, which she has since ceased taking. Mother's Br. at 10.

Mother argues at length about Grandmother's motivation to fabricate claims of Mother's untreated mental health issues and substance abuse. Although Grandmother's absence from the fact-finding hearing gives us pause, we are bound by our standard of review, which precludes us from reweighing the evidence or judging the credibility of witnesses. *Roark*, 551 N.E.2d at 869. We may consider only the evidence and reasonable inferences drawn therefrom which support the judgment. *Id.*

The evidence clearly establishes that Mother, by her own admission, became “very suicidal,” and slashed her wrists or arms in an apparent suicide attempt. (Tr. 62). She dismisses these behaviors as having resulted from her taking a doctor-prescribed anti-depressant, which she elected to cease taking without consulting with a medical professional. Nor did she ever seek medical treatment for her wounds or mental health treatment for her suicidal ideations. Mother denies having been diagnosed with depression, but has previously been prescribed two anti-depressants to treat “body pains” following childbirth² and to aid in smoking cessation. Furthermore, Mother admits to using illicit drugs just two months before the fact-finding hearing.

The record reveals further that Grandmother, H.T.’s legal guardian, was no longer willing or able to care for her; and that Rehm, J.R.’s father, had not taken appropriate legal action to protect J.R. or to ensure that Mother would not have access to him.

Based upon the foregoing, we find no clear error from the trial court’s determination that H.T. and J.R. were CHINS because Mother has untreated substance abuse and mental health issues that impaired her ability to appropriately parent them.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

² The record reveals that Mother advised FCM Beckwith that she took Effexor for childbirth-related “body pains” for a two-year period.